



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/996,475 | 11/20/2001 | Vladislav Olchanski | 58367.000003 | 2706 |

7590 08/09/2005

Thomas E. Anderson, Esq.
Hunton & Williams
1900 K Street, N.W.
Washington, DC 20006-1109

| |
|----------|
| EXAMINER |
|----------|

TANG, KAREN C

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

2151

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/996,475

Applicant(s)

OLCHANSKI ET AL.

Examiner

Karen C. Tang

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/14/02</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1-9, and 11-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter (i.e. a method can be a software program)

Claims 10, 18 and 25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter (i.e. signal embodied a carrier wave)

Claim 19-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter (i.e. an apparatus can be a software program).

Claim 24 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter (i.e. an article can be a software program).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Menzie et al hereinafter Menzie (US 6,650,932).

1. Referring to Claim 1, 11, 24, and 25, Menzie discloses collecting at least two outcomes data sets (refer to Col 1, Lines 30-50);

At least one processor readable carrier (refer to Col 5);

Instructions carried on the at least one carrier (it is inherent that software comprises instructions, refer to Col 5);

Wherein the instructions are configured to be readable from the at least one carrier by at least one processor and thereby cause the at least one processor to operate so as to (refer to Col 4, Lines Col 5 and Col 18, Lines 35-55):

Converting the at least two outcomes data sets into at least one outcomes result (test results, refer to Col 2, Lines 8-30).

Establishing a norm for an outcomes data group, the outcomes data group comprising a plurality of the at least two outcomes data sets (refer to Col 2, Lines 25-60 and Col 6, Lines 60-67 and Col 7, Lines 1-35).

Comparing a selected one of the at least one outcomes result to the norm (refer to Col 6, Lines 60-67, and Col 7, Lines 1-30);

Generating at least one outcomes monitoring report comprising the selected one of the at least one outcomes result and the norm (refer to Col 5 - 9).

2. Referring to Claim 19, Menzie discloses

A data collection portion wherein the data collection portion collects at least two outcomes data sets (refer to Col 4, Lines 15-67)

Art Unit: 2151

A data processor portion wherein the data processor portion receives the at least two outcomes data sets from the data collection portion and wherein the data processor (refer to Col 4 and 5) comprises:

A converter portion wherein the converter portion converts the at least two outcomes data sets into an at least one outcomes result (test results, refer to Col 2, Lines 8-30);

A norm establishing portion wherein the norm established portion establishes a norm for an outcomes data group, the outcomes data group comprising a plurality of the at least two outcomes data sets (refer to Col 2, Lines 25-60 and Col 6, Lines 60-67 and Col 7, Lines 1-35).

A comparison portion wherein the comparison portion compares a selected one of the at least one outcomes result to the norm (refer to Col 6, Lines 60-67, and Col 7, Lines 1-30);

and a report generation portion wherein the report generation portion generates at least one outcomes monitoring report comprising the at least one outcomes result and the norm (refer to Col 5 – 9);

3. Referring to Claims 2 and 12, Menzie discloses transmitting the at least two outcomes data sets to a data processor (refer to Col 2, Lines 8-31, Col 4, Lines 50-67).

Art Unit: 2151

4. Referring to Claims 3, 13, and 21, Menzie discloses selectively restricting access to the outcomes monitoring report (refer to Col 11, Lines 5-30).
5. Referring to Claims 4, and 14 and 20, Menzie posting the outcomes monitoring report over the webpage (refer to Col 4 and 6).
6. Referring to Claims 5 and 16, Menzie discloses collecting the at least two outcomes data sets from at least one user entity at a plurality of discrete intervals (refer to Col 1, Col 2, Col 11, Lines 1-60, and Col 13, 14, and 16).
7. Referring to Claim 7, Menzie discloses generating the outcomes report from at least two of the plurality of discrete intervals (refer to Col 5 – 9, Col 1, 2, 11, Lines 1 – 60 , and Col 13, 14, and 16).
8. Referring to Claims 8 and 16, Menzie discloses collecting the outcomes data sets from a plurality of user entities (refer to Col 11, and Col 17), individually identifying and converting the outcomes data sets for each user entity of the plurality of user entities (refer to Col 11, Col 13, and 14), and wherein the outcomes data sets from the plurality of user entities comprises the outcomes data group (refer to Col 11).

9. Referring to Claim 9 and 17, Menzie discloses wherein the outcomes monitoring report includes at least one outcomes result for a selected user entity of the plurality of user entities and at least one comparison of the norm to the selected one of the least one outcomes result for the selected user entity (refer to Col 5, 6, 7, 10, 14, 16, and 17).
10. Referring to Claim 10 and 11, Menzie discloses a computer signal embodies in a carrier wave readable by a computing system and encoding a computer program of instructions for executing a computer process performing the method recited in claim 1 (refer to Col 5, 12, 13, 15, and 18).
11. Referring to Claim 22, Menzie discloses wherein the at least two outcomes data sets are surgical procedures outcomes data set (refer to Col 1 and 2).
12. Referring to Claim 23, Menzie discloses wherein the at least two surgical procedures outcomes dataset are primary source data sets (refer to Col 1 and 2).

Conclusion

A shortened statutory period for reply to this Office action is set to expire **THREE MONTHS** from the mailing date of this action.

Art Unit: 2151

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen C. Tang whose telephone number is (571)272-3116. The examiner can normally be reached on M-F 7 - 3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571)272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KT


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER